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CLEARINGHOUSE RULE 00-065

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. Under s. PSC 117.07 (3), the commission must determine the annual fee, if any, that it assesses electric providers for the purpose of funding the commission’s renewable resource credit (RRC) program administrator. No statute expressly confers the power to the commission to establish this fee. The implied authority for the commission to establish and assess electric providers for the fee is not apparent.

In addition, if the commission concludes after review that it does have the authority to assess this fee, on what basis does the commission apply the fee to a nonexempt electric provider, as determined under s. PSC 117.01 (4), that chooses to comply with s. 196.378 (2) (a), Stats., directly without the use of any renewable resource credits from another electric provider and, thus, without receiving any services from the administrator?

b. The rule appears to allow electricity to be used in a renewable resource credit that is not authorized under s. 196.378, Stats. To be eligible for this use, the electricity must be supplied by a renewable facility owned, operated or under a wholesale purchase contract with an electric utility or retail electric cooperative in Wisconsin and sold by the utility or cooperative to its retail customers or members. See s. 196.378 (1) (g), (n) and (o), (2) (a) (intro.) and (3), Stats. The definition of “renewable resource credit” in s. PSC 117.02 (9) refers to the requirements set forth in ch. PSC 117 but not s. 196.378, Stats. Neither s. PSC 117.04 (1) nor 117.06 (2) explicitly refers to these requirements. If the commission intends to include these requirements

under s. PSC 117.06 (2) (c), the preferred rule drafting style is to include the requirements in the text of the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. PSC 117.01, the word “a” should be replaced by the word “an” before the acronym “RRC.” (The entire rule should be reviewed for the use of the correct article before this acronym.)

b. Section PSC 117.02 (10) refers to the creation, sale, transfer, purchase and retirement of a renewable resource credit. Subsection (11) refers to creating, trading, tracking and submitting RRCs. Section PSC 117.05 (5) refers to the award, transfer and retirement of credits. The terminology used in connection with the RRC trading program should be made consistent.

c. Section PSC 117.02 (3) defines “designated representative” to be “the person authorized by the owner or operator of a renewable resource to register that resource with the program administrator” Given the use of the term “designated representative” in s. PSC 117.06 (2) (intro.) and (3), “renewable facility” and “facility” should be substituted for “renewable resource” and “resource,” respectively, in the definition of “designated representative.”

d. The phrase “meets the requirements set forth in this chapter” in the definition of “renewable resource credit” in s. PSC 117.02 (9) is vague. Can the commission specify which requirements must be met for a megawatt-hour of renewable energy to become a renewable resource credit? Also, the use of “otherwise” in this definition is at best unnecessary and at worst confusing to a reader.

e. Section PSC 117.04 describes how a “facility” may create RRCs for use in the RRC trading program. First, neither the statutes nor the rule define the term “facility.” It appears that when the commission intends to refer to a facility, it should make use of the defined statutory terms “renewable facility” throughout the rule. Next, in sub. (2), it is not clear why a renewable facility that is used to qualify for an electric provider exemption under s. 196.378 (2) (e), Stats., may not provide excess RRCs for use in the RRC trading program. The commission should provide an explanation for this provision in its analysis.

f. Under s. PSC 117.05 (2) (b) 2., the owner of a participating renewable facility must identify all electric providers to which energy was sold and the amount sold to each electric provider. Does the commission want the owner to not only identify this information but also to provide it to either the commission or its program administrator?

g. Section PSC 117.05 (2) (c) provides that the program administrator must credit a renewable facility’s RRC account with the number of RRCs created. This leads the reader to the conclusion that a renewable facility, on its own, may participate in the RRC trading program. However, s. 196.378 (3) (a) describes the RRC trading program in terms of transfers of RRCs between electric providers. The rule provision should be clarified.

h. The commission should review the procedures for the mandatory retirement of renewable resource credits after five years under s. PSC 117.05 (4) to ensure that the procedures work under all circumstances. For example, as drafted, a renewable resource credit created in January of a year could be used in the month of March five years later even though it is more than five years old because it will not be retired in the annual retirement process until after April 1 under s. PSC 117.06 (4) (b).

i. Under s. PSC 117.07 (1) (a), the program administrator must identify the number of renewable resource credits necessary for each participating electric provider to comply with the minimum percentage requirements of s. 196.378 (2) (a), Stats. Should the program administrator identify these numbers on an annual or biennial basis, given that the requirements in s. 196.378 (2) (a), Stats., change every two years and that the total retail electric sales are calculated on the basis of an average amount of a provider's sales in this state during the prior three years under s. 196.378 (2) (b) 1., Stats.? Also, will the program administrator be responsible for applying s. 196.378 (2) (b) 2. to 4., Stats., to participating electric providers?

j. In the third sentence in s. PSC 117.07 (3), "non-electric" should be "non-exempt electric."

k. The fiscal estimate notes that the commission has not yet decided who will fulfill the role of program administrator. This of course should be determined prior to the promulgation of the rule.